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casional discharge of such matters with consequent pollution of the waters and damage to complainant's stock.

[Ed. Note.—For other cases, see *Waters and Water Courses*, Cent. Dig. §§ 60, 61; Dec. Dig. § 69.* 13 Va.-W. Va. Enc. Dig. 683.]

3. Limitation of Actions (§ 55 (6)*)—Negligence—Continuing Damage.—Where defendant company's plant for extraction of salts was constructed in 1895 as a permanent plant, and any damage resulting from discharge of noxious matters into the water course began with the initial operation and was continuous and a permanent nuisance, complainant, having failed to sue for the entire damage, past and future, within five years of the time of accrual of the cause in 1895, was barred by the statute of limitations.

[Ed. Note.—For other cases, see *Limitation of Actions*, Cent. Dig. § 304; Dec. Dig. § 55 (6).* 14 Va.-W. Va. Enc. Dig. 661.]

Error to Circuit Court, Smyth County.

Action by one Worley against the Mathieson Alkali Works. Judgment for defendant, and complainant brings error. Affirmed.

L. P. Summers, of Abingdon, for plaintiff in error.

White, Penn, Hutton & Penn, of Abingdon, for defendant in error.

SUTHERLAND et ux. v. MUNSEY et al.

Sept. 11, 1916.

[89 S. E. 882.]

1. Deeds (§ 6*)—What Constitutes—Contracts.—A written instrument recited that complainants, in consideration of a sum paid and further sums to be paid, bargained and sold and did both grant, bargain, sell, and convey described land, with covenants of general warranty, title to be free from all incumbrances. The instrument further provided for subsequent deed from complainants to defendant. Held that, despite the use of the words "grant, bargained, and sold," the agreement, showing that a formal deed was to be executed, was not a conveyance, but was only a contract; for the intention of the parties will govern.

[Ed. Note.—For other cases, see *Deeds*, Cent. Dig. § 6; Dec. Dig. § 6.* 4 Va.-W. Va. Enc. Dig. 371.]

2. Frauds, Statute of (§ 115 (5)*)—Signing—"Signature."—As a signature consists both of the act of writing the party's name and of the intention of finally authenticating the instrument, defendants, who prepared the agreement which in the body thereof recited their names for purposes of identification, cannot be deemed to have signed the

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

agreement so as to render it enforceable against them despite a plea of the statute of frauds; for the recital of their names was merely for purposes of identification (quoting Words and Phrases, Signature).

[Ed. Note.—For other cases, see Frauds, Statute of, Cent. Dig. § 250; Dec. Dig. § 115 (5).* 6 Va.-W. Va. Enc. Dig. 534.]

Appeal from Circuit Court, Russell County.

Bill by Lafayette Sutherland and wife against J. G. Munsey and another. From a decree sustaining a demurrer to the bill, complainants appeal. Affirmed.

W. W. Bird, of Lebanon, for appellants.

Burns & Kelly and *S. B. Quilen*, all of Lebanon, for appellees.

MUNCY *v.* UPDYKE.

Sept. 11, 1916.

[89 S. E. 884.]

1. Easements (§ 61 (8)*)—Obstruction—Pleading—Prescription.—Where the bill to enjoin the obstruction of a way alleged a state of facts which, if proven, showed that complainant was entitled to a way by prescription, it was not necessary to allege the conclusion of law that the facts constituted a way by prescription to entitle complainant to a hearing on the merits.

[Ed. Note.—For other cases, see Easements, Cent. Dig. §§ 141, 142, 144; Dec. Dig. § 61 (8); Pleading, Cent. Dig. § 1323.* 4 Va.-W. Va. Enc. Dig. 869.]

2. Easements (§ 61 (8)*)—Obstruction of Way—Pleading—Location.—A bill to enjoin the obstruction of a way claimed by prescription alleged complainant's right to the use of the "old Thompson road" and actual use of it for more than 10 years, during which he had repaired it, with the acquiescence of the owners of the land through which it passed; that such road was and always had been a private right of way incident to the "James Thompson land," and used as such by all owners of land lying between it and the public road, together with a reference to such road in deeds filed with the bill, though not alleging the bearings and distances, sufficiently located the road by marks of travel and by local tradition.

[Ed. Note.—For other cases, see Easements, Cent. Dig. §§ 141, 142, 144; Dec. Dig. § 61 (8); Pleading, Cent. Dig. § 1323.* 4 Va.-W. Va. Enc. Dig. 869.]

3. Easements (§ 61 (12)*)—Obstruction of Way—Decree—Certainty.—Where the only part of the way in controversy was a section between the middle of a creek and a public road over the land of the

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